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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL CHARLES WARD,

Petitioner,

v.

Civil No. 04-CV-73725-DT
HONORABLE AVERN COHN
UNITED STATES DISTRICT JUDGE

HUGH WOLFENBARGER,

Respondent,

/

**OPINION AND ORDER REQUIRING AN ANSWER TO THE PETITION
FOR WRIT OF HABEAS CORPUS AND THE RULE 5 MATERIALS**

This matter is on remand from the United States Court of Appeals for the Sixth Circuit. Michael Charles Ward ("petitioner"), presently on parole supervision with the Michigan Department of Corrections through the Huron County Probation and Parole Office in Bad Axe, Michigan, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he challenged his 1981 conviction for possession with intent to deliver 650 or more grams of cocaine, contrary to M.C.L.A. 333.7401 (1) and (2)(a)(I). Respondent filed a motion to transfer or to dismiss the petition for writ of habeas corpus, on the ground that it was a second or successive challenge by petitioner to his 1981 conviction.

On April 12, 2005, the court granted respondent's motion and transferred the petition pursuant to 28 U.S.C. § 2244(b)(3)(A) to the United States Court of Appeals for the Sixth Circuit for authorization for petitioner to file a second petition.

On November 22, 2005, the Sixth Circuit ruled that petitioner's current habeas

petition was not a second or subsequent challenge to his 1981 conviction and that it was unnecessary for petitioner to obtain a certificate of authorization from the Sixth Circuit prior to proceeding in the federal district court with his current habeas petition. *In Re Ward*, U.S.C.A. 05-1479 (6th Cir. November 22, 2005). The Sixth Circuit remanded the matter to the court for further proceedings. *Id.*

For the reasons stated below, the court orders respondent to file an answer to the petition for writ of habeas corpus within sixty days of the court's order. Respondent is also ordered to submit any Rule 5 materials which have not yet been filed with the Court by that date as well.

A habeas corpus petitioner who challenges the legality of his state custody is entitled to reasonably prompt disposition of his petition. *See Ukawabutu v. Morton*, 997 F. Supp. 605, 610 (D.N.J. 1998). A federal district court has the discretion under the rules governing responses in habeas corpus cases to set a deadline for a response to a habeas petition. *See Erwin v. Eto*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243. The court will therefore order respondent to file an answer to the petition for writ of habeas corpus within sixty days of this order.

The court also orders respondent to provide any Rule 5 materials which have not already been provided to the court at the time it files its answer. The habeas corpus rules require respondents to attach the relevant portions of the transcripts of the state court proceedings, if available, and the court may also order, on its own motion, or upon the petitioner's request, that further portions of the transcripts be furnished. *See Burns v. Lafler*, 328 F. Supp. 2d 711, 717 (E.D. Mich. 2004); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254.

Finally, the court will give petitioner forty five days from the receipt of the respondent's answer to file a reply brief to the respondent's answer, if he so chooses. Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254 states that a habeas petitioner "may submit a reply to the respondent's answer or other pleading within a time fixed by the judge." See *Baysdell v. Howes*, 2005 WL 1838443, * 4 (E.D. Mich. August 1, 2005).

ORDER

IT IS HEREBY ORDERED that respondent shall file an answer to the petition for writ of habeas corpus and any Rule 5 materials which have not yet been provided to the Court no later than **sixty days** from the court's order.

IT IS FURTHER ORDERED that petitioner shall have **forty five days** from the date that he receives the supplemental answer to file a reply brief.

SO ORDERED.

s/Avern Cohn
HON. AVERN COHN
UNITED STATES DISTRICT COURT

DATED: November 29, 2005